

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171 and 173

[Docket No. HM-1661; Amdt. Nos. 171-64, 173-53]

Transportation of Liquefied Petroleum Gas in Intrastate Commerce

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Final rule.

SUMMARY: This final rule authorizes the continued use in intrastate service of certain nonspecification cargo tanks for the carriage of liquefied petroleum gas (LPG) in States where this practice was permitted prior to the adoption of the Department's Hazardous Materials Regulations (HMR) by those States. This action is necessary because, in the past, individual States have permitted LPG to be transported in intrastate service in cargo tanks which were not built to the requirements of DOT Specification MC-330 or MC-331. When States adopted the HMR, these nonspecification cargo tanks were no longer authorized for the transportation of LPG. These amendments will allow the continued use of nonspecification cargo tanks for the transportation of LPG in intrastate commerce until they are taken out of service and replaced with new tanks that meet DOT requirements.

DATE: This amendment is effective April 19, 1982. However, compliance with the regulations as amended herein, is authorized immediately.

FOR FURTHER INFORMATION CONTACT: Darrell L. Raines, Chief, Exemptions and Regulations Termination Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau, 400 7th Street SW., Washington, D.C. 20590 (202-472-2726).

SUPPLEMENTARY INFORMATION: On May 18, 1981, the MTB published a notice of proposed rulemaking under Docket No. HM-1661; Notice No. 81-2 (49 FR 27146), which proposed an amendment to allow the continued use of certain nonspecification cargo tanks for the transportation of LPG in intrastate commerce.

Since passage of the Hazardous Materials Transportation Act (HMTA)

of 1974 (49 USC 1801 et seq.) the MTB has encouraged the adoption of the Hazardous Materials Transportation Regulations (49 CFR Parts 170 to 179) by the States in order to promote uniformity in safety regulation throughout the nation. However, the adoption of the Department's Hazardous Materials Regulations has created a few problems for some cargo tank owners and operators in certain States. DOT regulations require cargo tanks for LPG to be constructed in compliance with either DOT Specification MC-330 or MC-331. However, a number of cargo tanks not subject to DOT regulations (nor ICC regulations prior to 1967) have been constructed and used in intrastate commerce for many years without incident. While they were manufactured in accordance with certain consensus standards and were otherwise qualified for use, they do not meet the standards now required by DOT regulations. The result of a State's adoption and enforcement of DOT regulations is to immediately require that all cargo tanks in that jurisdiction comply with DOT specifications without provision for an adequate transition period.

The MTB received six comments on Notice No. 81-2. Two commenters stated that they supported the proposed amendments. However, they thought that the DOT should broaden the proposal to include interstate use of the nonspecification tanks. The MTB does not concur in the use of cargo tanks having a design pressure of less than 250 psig in interstate commerce. Three reasons for this denial are (1) it goes far beyond on what was proposed in the Notice; (2) it would be unfair to all of the carriers and owners who have purchased DOT specification equipment, and (3) it would be setting a precedent for the use of nonspecification cargo tanks in interstate commerce which would denigrate the value and validity of a nationally uniform system establishing the level of safety required for cargo tanks used to transport flammable gases such as propane.

Two comments received supported the proposed amendments with certain exceptions. First, they recommended that proposed paragraph §173.315(k) be revised to include reference to the API-ASME Code. One commenter recommended that a new paragraph (i) be added to §173.315(k) to read "Tanks designed and constructed in accordance with paragraphs U-68 or U-69 of the 1949 and earlier editions of the ASME Code and having a design pressure of 200 psi may be used provided that they comply with the other provisions of 173.315(k) of this subchapter. Such tanks may be rerated at a working pressure 25

percent in excess of the design pressure for which the tank was originally constructed, and if rerated shall be marked as follows: "Re-rated working pressure . . . psi." For purposes of setting safety relief valves and pressure control valves, and for establishing maximum and minimum design pressures, the rerated working pressure shall be considered as the equivalent of the design pressure as defined in these regulations." One commenter questioned use of the words "ASME certificate" in §173.315(k)(3). One commenter later withdrew his recommendation regarding reference to the API-ASME Code. The MTB does not concur that specific reference to made to the joint API-ASME Code. Inasmuch as the DOT (ICC prior to 1967) specification cargo tanks have referenced only the ASME Code for design, construction, and inspection requirements, it is not considered appropriate to include a reference to the API-ASME Code. Tanks designed and constructed in accordance with the ASME Code which have a design pressure less than 250 psig must be rerated to a working pressure of not less than 250 psig before entering service. The minimum design pressure which DOT is willing to accept for a cargo tank used to transport LPG is 250 psig.

One commenter stated that although the intention of the proposal is to "allow continued use of nonspecification cargo tanks for the transportation of LPG in intrastate commerce," proposed section 173.315(k)(6) goes far beyond the current situation. This commenter further stated that the Department has required, and enforced, the use of DOT specification cargo tanks by interstate carriers regardless of the inter/intra-state nature of the commerce. Since the proposal would permit a deterioration of the present safety situation, it is not believed to be in accordance with Congress' intent regarding "uniform national standards." Finally, this commenter recommended eliminating the words "including its operation by a motor carrier otherwise engaged in interstate commerce" from proposed §173.315(k)(6) and provide the "grandfather" exception to only intrastate carriers. The MTB does not agree with this commenter because application of the "grandfather" exception only to intrastate carriers would not alleviate the problems faced by a carrier whose status has changed from intrastate carrier to interstate carrier.

The last comment received was from the Hazardous Substances Transportation Board (HSTB) of the

Pennsylvania Department of Transportation which concurred in part with the proposed amendments. However, they recommended that documentation be required to be carried on each vehicle to establish the fact that the cargo tank complies with the requirements of § 173.315(k). Reasons cited by the HSTB for such documentation were to facilitate the highway enforcement program of the various States and to prevent unnecessary disruption of service by enforcement officials. While MTB recognizes that a requirement for the documentation recommended by the HSTB would somewhat ease the enforcement burden on both State and Federal enforcement personnel, this benefit is out-weighted by the recordkeeping burden placed on the motor carrier to maintain a copy of these documents in each vehicle at all times. It is the policy of the Federal government to reduce, not add to the paperwork burdens to the regulated community. However, if the carrier elects to carry this documentation with the vehicle, it may facilitate inspection and prevent delays by enforcement officials.

Except for minor editorial changes in § 173.315(k)(1), (3), (k)(6), and a new (k)(7) no other changes have been made to Notice No. 81-2.

The MTB has determined that this regulation is consistent with Section 2 of Executive Order 12291, and is a non-major rule under the terms of that Order. Pursuant to the Regulatory Flexibility Act, this rule will not result in a significant economic impact on a substantial number of small entities because its effect is to eliminate a burdensome restriction on certain carriers of LPG.

In consideration of the foregoing, 49 CFR Parts 171 and 173 are amended to read as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. In § 171.7, paragraph (d)(6) is revised to read as follows:

§ 171.7 Matter incorporated by reference.

(d) * * *
(6) NFPA Pamphlet No. 58 is titled, "Standard for the Storage and Handling of Liquefied Petroleum Gases," 1979 edition.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

2. In § 173.315, Note 2 following the table and paragraph (k) are revised to read as follows:

§ 173.315 Compressed gases in cargo tanks and portable tank containers.

Note 1. * * *
Note 2. See § 173.32 for authority to use other portable tanks and for manifolding cargo tanks, see § 173.301(d).

(k) A nonspecification cargo tank meeting, and marked in conformance with, the edition of the ASME Code in effect when it was fabricated, may be used for the transportation of liquefied petroleum gas if it—

- (1) Has a minimum design pressure no lower than 250 psig;
- (2) Has a capacity of 3,500 gallons or less;
- (3) Was manufactured in conformance with the ASME Code prior to January 1, 1981, according to its ASME name plate and manufacturer's data report;
- (4) Conforms to NFPA Pamphlet 58;

(5) Has been inspected and tested in accordance with § 173.33 as specified for Specification MC-330 or MC-331;

(6) Is operated exclusively in intrastate commerce (including its operation by a motor carrier otherwise engaged in interstate commerce) in a state where its operation was permitted by the laws of that State (not including the incorporation of this subchapter) prior to January 1, 1981;

(7) Was used to transport liquefied petroleum gas prior to January 1, 1981; and

(8) Is operated in conformance with all other requirements of this subchapter.

(49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53, App. A to Part 1)

Note.—The Materials Transportation Bureau has determined that this document will not result in a "major rule" under the terms of Executive Order 12291 and is not a significant regulation under DOT's regulatory policy and procedures (44 FR 11034), nor require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321 et seq.) A regulatory evaluation and an environmental assessment are available for review in the docket. I certify that this final rule will not have a significant economic impact on a substantial number of small entities.

Issued in Washington, D.C. on February 12, 1982.

L. D. Santman,

Director, Materials Transportation Bureau.

[FR Doc. 82-4456 Filed 2-17-82; 8:45 am]

BILLING CODE 4910-60-M